UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

STAY THE COURSE WEST VIRGINIA,
a West Virginia unaffiliated independent
expenditure political action committee;
DAVID BAILEY, in his capacity as Chairman and
Treasurer of Stay the Course West Virginia;
PINEVILLE LUMBER, INC., a West Virginia
Corporation; and **THOMAS STEPHEN BAILEY**,

Plaintiffs,

v. **Case No. 1:12-cv-1658**

NATALIE E. TENNANT, in her official capacity
as West Virginia Secretary of State and member
of the West Virginia State Election Commission;
and **SCOTT ASH**, in his official capacity as
Prosecuting Attorney for Mercer County, West
Virginia, as a representative of the class of all
West Virginia Prosecuting Attorneys,

Defendants.

RESPONSE OF NATALIE E. TENNANT,
WEST VIRGINIA SECRETARY OF STATE,
TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Now comes the Defendant, Natalie E. Tennant, in her official capacity as West Virginia Secretary of State and member of the West Virginia State Election Commission, by counsel, in opposition to the Plaintiffs' Motion for a Preliminary Injunction. The Defendant respectfully requests that the Court deny the injunction upon the following grounds:

1. The request of the Plaintiffs would defeat and invalidate an act of the West Virginia Legislature, despite the presumption of constitutional validity that arises when the duly-elected,

representative, legislative body of a state establishes a law to combat a recognized harm to the public interest.

2. When all relevant factors are taken into consideration, the Plaintiffs cannot demonstrate and prove the requisite elements to justify the grant of the extraordinary remedy of a temporary injunction.

3. The Plaintiffs have failed to allege an irreparable harm that is significant or substantial enough to outweigh the state's interest in government free of the potential for, and the appearance of, corruption.

4. Although enjoining the enforcement of a legislative enactment would not present a particular harm to the Defendant, it would bring significant and long-lasting harm to the West Virginia Election Commission, to the West Virginia Legislature, and to the people of West Virginia, before whom the Defendant stands as representative and defender. These harms must be balanced against those claimed by the Plaintiffs.

5. The Plaintiffs are not likely to prevail on the merits of their underlying action. Although the Plaintiffs have drawn analogies, and made citations, to similar cases, the specific issues in this case have not been fully developed or explored and, therefore, they present novel issues and may depend upon factual determinations that distinguish this case from those reference by the Plaintiffs.

6. There is a substantial public interest in the fair dealing by, and confidence in the actions of, every branch of government. When this is considered in conjunction with the principles of free speech, the provisions of WEST VIRGINIA CODE §3-8-12(f), §3-8-12(g), and of §147-3-5.2(2008), 147 CSR 3, represent a reasonable balance in the fostering of all these interests.

For these reasons, the Court should not enjoin the enforcement of the cited provisions of West Virginia law.

Respectfully submitted,
NATALIE E. TENNANT,
In her official capacity as
SECRETARY OF STATE OF
THE STATE OF WEST VIRGINIA,
and member of the WEST VIRGINIA
STATE ELECTION COMMISSION,

By counsel

DARREL V. McGRAW, Jr.,
ATTORNEY GENERAL

/s/ Doren Burrell

DOREN BURRELL (West Virginia State Bar #555)
SENIOR ASSISTANT ATTORNEY GENERAL
Office of the Attorney General
State Capitol Complex
Building 1, Room E-26
Charleston, WV 25305
Phone - (304) 558-2021

CERTIFICATE OF SERVICE

I, the undersigned attorney, hereby certify that I have, on this 16th day of July, 2012, electronically filed the foregoing "Memorandum of Natalie E. Tennant, West Virginia Secretary of State, in Opposition to Preliminary Injunction" with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following counsel:

Allen R. Prunty
W. Bradley Sorrels
Counsel for the Plaintiffs

I further certify that I have also served a true copy of the foregoing document upon the Defendant, Scott Ash, Prosecuting Attorney of Mercer County, West Virginia, by depositing a true copy thereof in the United States Mail, with first class postage prepaid, on this 16th day of July, 2012, addressed as follows:

Scott Ash, Esquire
Prosecuting Attorney of Mercer County
120 Scott Street, Suite 200
Princeton, WV 24740

/s/ Doren Burrell